APPENDIX A.

Revenue Act of 1934 and Treasury Regulations 86.

REVENUE ACT OF 1934, 48 STAT. 680:

"**Sec. 22. Gross Income.**

"(a) **General Definition.**—'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. . . .

"(b) **Exclusions from Gross Income.**—The following items shall not be included in gross income and shall be exempt from taxation under this title:

* * * * * * * *

"(2) **Annuities, Etc.**— . . . Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to 3 per centum of the aggregate premiums or consideration paid for such annuity (whether or not paid during such year),

until the aggregate amount excluded from gross income under this title or prior income tax laws in respect of such annuity equals the aggregate premiums or consideration paid for such annuity. . . ."

Regulations 86 (1934):

"Art. 22(a)-12. **Annuities and insurance policies.**—Annuities paid by religious, charitable, and educational corporations under an annuity contract are, in general, subject to tax to the same extent as annuities from other sources paid under similar contracts. (See section 22(b)(2) and article 22(b)(2)-2.) . . . Amounts received as a return of premiums paid under life insurance, endowment, or annuity contracts, and the so-called 'dividend' of a mutual insurance company which may be credited against the current premium, are not subject to tax."

"Art. 22(b)(2)-2. **Annuities.**—. . . If an annuity is payable in annual installments, there shall be included in gross income only such portion of the amounts received in any taxable year as is equal to 3 per cent of the aggregate premiums or consideration paid for such annuity, whether or not paid during such year. If an annuity is payable in two or more installments over each 12-month period, such portion of each installment shall be taxable as is equal to 3 per cent of the aggregate premiums or consideration paid for such annuity, whether or not paid during the taxable year, divided by the number of installments payable during such year. As soon as the aggregate of the amounts received and excluded

from gross income equals the aggregate premiums or consideration paid for such annuity, the entire amount received thereafter in each taxable year must be included in gross income. The provisions of this article may be illustrated by the following examples:

"*Example (1):* A bought in 1933, for $50,000 consideration, a life annuity, payable in annual installments of $5,000. For the calendar year 1934 he would be required to include in gross income $1,500 of the $5,000 received during that year (3 per cent of $50,000), $3,500 being exempt. If A should live long enough to receive as exempt $50,-000, then all amounts he receives thereafter under the annuity contract would be included in gross income.

. . . ."

APPENDIX B.

Revenue Acts from 1918 to 1932, inclusive, and Treasury Regulations Promulgated Thereunder.

I.

Revenue Acts.

Revenue Act of 1918, 40 Stat. 1057:

"Sec. 213. That for the purposes of this title (except as otherwise provided in section 233) the term 'gross income'—

. . . .

"(b) Does not include the following items, which shall be exempt from taxation under this title:

. . . .

"(2) The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract;"

Revenue Act of 1921, 42 Stat. 227:

"Sec. 213. That for the purposes of this title (except as otherwise provided in section 233) the term 'gross income'—

. . . .

"(b) Does not include the following items, which shall be exempt from taxation under this title:

. . . .

"(2) The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract;"

Revenue Act of 1924, 43 Stat. 253:

"Sec. 213. For the purposes of this title, except as otherwise provided in section 233—

. . . .

"(b) The term 'gross income' does not include the following items, which shall be exempt from taxation under this title:

. . . .

"(2) The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract;"

Revenue Act of 1926, 44 Stat. 9:

"Sec. 213. For the purposes of this title, except as otherwise provided in section 233—

. . . .

"(b) The term 'gross income' does not include the following items, which shall be exempt from taxation under this title:

. . . .

"(2) Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts) under a life insurance, endowment, or annuity contract, but if such amounts (when added to amounts received

before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. . . ."

Revenue Act of 1928, 45 Stat. 791:

"**Sec. 22. Gross Income.**

. . . .

"(b) **Exclusions from Gross Income.**—The following items shall not be included in gross income and shall be exempt from taxation under this title:

. . . .

"(2) **Annuities, Etc.**—Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts) under a life insurance, endowment, or annuity contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. . . ."

Revenue Act of 1932, 47 Stat. 169:

"**Sec. 22. Gross Income.**

. . . .

"(b) **Exclusions from Gross Income.**—The following items shall not be included in gross income and shall be exempt from taxation under this title:

. . . .

"(2) **Annuities, Etc.**—Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts) under a life insurance, endowment, or annuity contract, but if such amounts (when added to amounts

received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. . . ."

II.

Treasury Regulations.

REGULATIONS 45 (1918):

"ART. 47. **Annuities and insurance policies.**—Annuities paid by religious, charitable, and educational corporations under an annuity contract are subject to tax to the extent that the aggregate amount of the payments to the annuitant exceeds any amounts paid by him as consideration for the contract. . . . Where an insured receives under life insurance, endowment, or annuity contracts sums in excess of the premiums paid therefor, such excess is income for the year of its receipt. See article 72. . . ."

"ART. 72. **Proceeds of insurance.**—. . . (b) During his life only so much of the amount received by an insured under life, endowment or annuity contracts as represents a return, without interest, of premiums paid by him therefor is excluded from his gross income. See article 47. . . ."

REGULATIONS 62 (1921):

"ART. 47. **Annuities and insurance policies.**—Annuities paid by religious, charitable, and educational corporations under an annuity contract are subject to tax to the extent that the aggregate amount of the payments to the annuitant exceeds

any amounts paid by him as consideration for the contract. . . . Where an insured receives under life insurance, endowment, or annuity contracts sums in excess of the premiums paid therefor, such excess is income for the year of its receipt. See article 72. . . ."

"Art. 72. **Proceeds of insurance—Compensation—War pensions.**—. . . (b) During his life only so much of the amount received by an insured under life, endowment, or annuity contracts as represents a return, without interest, of premiums paid by him therefor is excluded from his gross income. See article 47. . . ."

Regulations 65 (1924):

"Art. 47. **Annuities and insurance policies.**—Annuities paid by religious, charitable, and educational corporations under an annuity contract are subject to tax to the extent that the aggregate amount of the payments to the annuitant exceeds any amounts paid by him as consideration for the contract. . . . Amounts received by an insured as a return of premiums paid by him under life insurance, endowment, or annuity contracts, such as the so-called 'dividends' of a mutual insurance company which may be credited against the current premium, are not subject to tax. See article 72. . . ."

"Art. 72. **Proceeds of insurance—Compensation—Pensions.**—. . . The amount received by an insured under life insurance, endowment, or annuity contracts as a return, without interest, of premiums paid by him therefor is excluded from his gross income. See article 47. . . ."

Regulations 69 (1926):

"Art. 47. **Annuities and insurance policies.**—Annuities paid by religious, charitable, and educational corporations under an annuity contract are, in general, subject to tax to the extent that the aggregate amount of the payments to the annuitant exceeds the amounts paid as consideration for the contract. (But see section 213(b)(2) and article 72.) . . . Amounts received by an insured as a return of premiums paid by him under life insurance, endowment, or annuity contracts, such as the so-called 'dividends' of a mutual insurance company which may be credited against the current premium, are not subject to tax."

"Art. 72. **Proceeds of insurance— Compensation— Pensions.**—. . . Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts) under a life insurance, endowment, or annuity contract are excluded from gross income, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. (See article 47.) . . ."

Regulations 74 (1928):

"Art. 62. **Annuities and insurance policies.**—Annuities paid by religious, charitable, and educational corporations under an annuity contract are, in general, subject to tax to the extent that the aggregate amount of the payments to the annuitant exceeds the amounts paid as consideration for the contract.

But see section 22(b)(2) and article 82. . . . Amounts received by an insured as a return of premiums paid by him under life insurance, endowment, or annuity contracts, such as the so-called 'dividend' of a mutual insurance company which may be credited against the current premium, are not subject to tax."

"ART. 82. **Proceeds of insurance—Compensation—Pensions.**—. . . Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts) under a life insurance, endowment, or annuity contract are excluded from gross income, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. (See article 62.) . . ."

REGULATIONS 77 (1932):

"ART. 62. **Annuities and insurance policies.**—Annuities paid by religious, charitable, and educational corporations under an annuity contract are, in general, subject to tax to the extent that the aggregate amount of the payments to the annuitant exceeds the amounts paid as consideration for the contract. But see section 22(b)(2) and article 82. . . . Amounts received by an insured as a return of premiums paid by him under life insurance, endowment, or annuity contracts, such as the so-called 'dividend' of a mutual insurance company which may be credited against the current premium, are not subject to tax."

"ART. 82. **Proceeds of insurance—Compensation.** —. . . Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts) under a life insurance, endowment, or annuity contract are excluded from gross income, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. (See article 62.) . . ."

APPENDIX C.

Constitutional Provisions Relied on by Petitioner.

Constitution of the United States:

Article I, Section 2, Clause 3:

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, . . ."

Article I, Section 9, Clause 4:

"No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken."

Fifth Amendment to the Constitution:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

APPENDIX D.

Congressional Committee Reports, relating to Section 22(b) (2) of the Revenue Act of 1934.

Report of Committee on Ways and Means of the House of Representatives (73d Cong., 2d Sess., H. Rept. No. 704, p. 21):

"Section 22(b)(2). Annuities, etc.: The present law does not tax annuities arising under contracts until the annuitant has received an aggregate amount of payments equal to the total amount paid for the annuity. Payments to annuitants are, in fact, based upon mortality tables which purport to reflect a rate of return sufficient to enable the annuitant to recover his cost and in addition thereto a low rate of return on his investment. The change continues the policy of permitting the annuitant to recoup his original cost tax-free but requires him to include in his gross income a portion of the annual payments in an amount equal to 3 per cent of the cost of the annuity. While the per cent used is arbitrary, it approximates the rate of return in the average annuity.

"Statistics show that an increasing amount of capital is going into the purchase of annuities, with the result that income taxes are postponed indefinitely. The change merely places the return of this form of investment on the same basis as other forms of investment by taxing that portion of each payment which in fact constitutes income."

Report of Committee on Finance of the Senate (73d Cong., 2d Sess., S. Rept. No. 558, p. 23):

"Section 22(B)2. Annuities.

"The present law does not tax annuities arising under contracts until the annuitant has received an aggregate amount of payments equal to the total amount paid for the annuity. Payments to annuitants are, in fact, based upon mortality tables which purport to reflect a rate of return sufficient to enable the annuitant to recover his cost, and in addition thereto, a low rate of return on his investment.

"The House bill continues the policy of permitting the annuitant to recoup his original cost tax-free but requires him to include in his gross income a portion of the annual payments in an amount equal to 3 per cent of the cost of the annuity. While your committee is in agreement with the change made by the House, it was thought advisable to continue the policy of not taxing any portion of the amount received from an annuity until the aggregate amount of payments equal the total amount paid for the annuity in cases where the aggregate amount received by the annuitant from all his annuities is not more than $500. The following example illustrates the change made:

"Example: 'A,' an individual, received during the calendar year the following amounts from annuities: Annuity No. 1, $450; annuity No. 2, $300; and annuity No. 3, $150. In the case of annuity No. 1, 'A' prior to 1934 received aggregate payments equal to the aggregate premiums paid. In the case of annuity No. 1, 'A' reports the entire amount

of the annuity because all of his capital has been returned. In the case of annuity No. 2 and annuity No. 3, 'A' is required to include in gross income 3 per cent of the consideration paid for each such annuity. The $500 exemption will not apply in such a case because the total annuity payments received by 'A' during the taxable year exceed that amount."

REPORT OF CONFERENCE COMMITTEE (73d Cong., 2d Sess., H. Rept. No. 1385, p. 17):

"Amendment No. 14: The House bill requires an annuitant to include in his gross income a portion of the annual receipts in an amount equal to 3 per cent of the cost of the annuity. The Senate amendment excepts from the House change persons whose aggregate receipts from annuities in the year do not exceed $500, and makes some minor changes in phraseology. The House recedes with an amendment rejecting the $500 exception."